APPEAL NO. 010136

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 18, 2000. With regard to the issues before him, the hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on May 19, 1999, with an impairment rating (IR) of 13%.

DECISION

Affirmed as reformed.

FACTS

The pertinent facts are contained within the documentary evidence. No testimony was offered at the hearing. The claimant was initially certified by his treating doctor, Dr. H, as having reached MMI on May 18, 1999, with a 2% IR. Subsequently, the claimant contacted Dr. H and explained that he had not attended the previously scheduled MRI due to transportation and financial problems. The claimant was rescheduled for the MRI on August 5, 1999. On August 3, 1999, prior to having the MRI performed, the claimant was examined by the designated doctor, Dr. B. Dr. B certified the MMI date of May 18, 1999, and assigned an 11% IR with 5% from Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) and 6% from range of motion (ROM). The MRI revealed degenerative disk disease at two levels.

The claimant sent a letter dated September 10, 1999, to the Texas Workers' Compensation Commission (Commission) which was received on September 24, 1999, stating in part:

> I, claimant . . . is writing this letter to disputed designated doctor due to MRI-X-Ray showing.

The Commission then sent a letter to Dr. B informing him that subsequent to his initial examination, an MRI had been performed and requesting that he notify the Commission whether the MRI results would cause him to change his opinion and, if so, to submit an amended Report of Medical Evaluation (TWCC-69). Dr. B reviewed the MRI results and reexamined the claimant, performing ROM tests a second time. Based upon the second ROM tests, which yielded a higher rating, and the MRI results, Dr. B assigned a 16% IR on March 24, 2000. In addition to the 16% IR, Dr. B documented that the claimant had not reached MMI. However, in apparent contradiction, Dr. B estimated the MMI date to be May 18, 1999, the same date that had previously been assigned.

On a Notice of Maximum Medical Improvement/Impairment Rating Dispute (TWCC-32) form dated April 5, 2000, the carrier disputed the March 24, 2000, MMI date and IR.

In response to the dispute, the Commission sent another letter to Dr. B, dated August 4, 2000, requesting an answer to the following question:

> 1. What, in your opinion, is the impairment rating without considering the range of motion from your second evaluation and considering the MRI findings only?

Dr. B replied in a letter dated August 21, 2000:

> [G]iven his original ROM of 6% plus his Soft Tissue of 7% as a result of the MRI, I would now assign an [sic] whole impairment of 13%.
>
> The reason I assigned 16% on my second ratting [sic], was the MMI date of 5/18/99 was not in question, and I was told only to give him an impairment rating, and not an MMI date.

Dr. H, the treating doctor, noted in a medical record dated September 5, 2000, that he had rescinded his originally assessed MMI date of May 18, 1999, and 2% IR, stating that "[i]t is absolutely ridiculous for anyone to assume, at this point, that the patient was at MMI on 05/18/99." Additionally, Dr. H predicted that MMI would be reached statutorily (Section 401.011(30)(B)). Dr. B, however, listed the MMI date of May 18, 1999, on all of his certifications.

FIRST APPEALED ISSUE AND DECISION

Contradictory evidence was presented regarding the date of MMI. Dr. H originally certified that MMI had been reached on May 18, 1999. Dr. B certified the same date. Subsequently, Dr. H rescinded the MMI date that he had previously certified and estimated that MMI would be reached statutorily. Sections 408.122(c) and 408.125(e) provide in part that the report of the designated doctor has presumptive weight, and the Commission shall base its determination of MMI and IR on the report unless the great weight of the other medical evidence is to the contrary. The great weight of the other medical evidence is not contrary to the MMI date of May 18, 1999, which was assigned by Dr. B. The hearing officer did not err in giving presumptive weight to the designated doctor's MMI date, although a clerical error was made in the order with regard to the date and is hereby reformed to reflect the correct date of May 18, 1999.

SECOND APPEALED ISSUE AND DECISION

After Dr. B's initial certification of MMI and IR and upon request of the Commission, he amended his IR certification twice, ultimately arriving at a 13% rating. The first amendment was necessary because the MRI results were not considered prior to the first IR assessment. To evaluate the impairment to include the MRI results, Dr. B examined the claimant and again performed ROM tests. Dr. B assigned a higher rating for ROM than he had previously. No explanation was given for the need to perform ROM tests a second

time. Based upon the ROM tests and the MRI results, Dr. B assessed a 16% IR. The Commission then requested that Dr. B assess an IR based upon the MRI results and his first evaluation of the claimant, not considering the second ROM tests. In response, Dr. B assessed a 13% IR, which was adopted by the hearing officer as the correct IR.

A designated doctor's report may be amended where there were incomplete or erroneous facts when the first report was rendered. *See* Texas Workers' Compensation Commission Appeal No. 941600, decided January 12, 1995. Whether a doctor has amended his report for a proper reason and within a reasonable amount of time is essentially a question of fact. Texas Workers' Compensation Commission Appeal No. 960888, decided June 18, 1996. However, once valid ROM test results are achieved consistent with the AMA Guides, a second testing of ROM is not a proper basis for amending IR certification. Texas Workers' Compensation Commission Appeal No. 951142, decided August 28, 1995. In the present case, no explanation or justification was given for the need to change the first ROM test results. The hearing officer found that great weight of the other medical evidence was not contrary to the 13% amended IR assigned by Dr. B and based on the initial ROM tests and the MRI results. The hearing officer's findings are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the decision and order of the hearing officer, as reformed, are affirmed.

Robert E. Lang
Appeals Panel
Manager/Judge

CONCUR:

Robert W. Potts
Appeals Judge

CONCUR IN THE RESULT:

Thomas A. Knapp
Appeals Judge